

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

FILED  
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2004 JUL 26 A 11: 59  
U.S. DISTRICT COURT  
DISTRICT OF MASS

NELSON R. ROUETTE AND  
JAY NEARIS,

Plaintiffs and  
Counterclaim Defendants

VS.

MACHINE & ELECTRICAL  
CONSULTANTS, INC., FABIEN DUBE,  
AND NORM CREPEAU,

Defendants and  
Counterclaim Plaintiffs

MACHINE & ELECTRICAL  
CONSULTANTS, INC.

Third-Party Plaintiff

VS.

QUALITY MACHINE SOLUTIONS,  
INC.

Third-Party Defendant

**ANSWER TO COUNTERCLAIM  
AND THIRD PARTY COMPLAINT**

BACON & WILSON, P.C.

ATTORNEYS AT LAW

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**PARTIES AND JURISDICTION**

1. Nelson Rouette, Jay Nearis and Quality Machine Solutions, Inc. (hereinafter "Defendants") admit the allegations contained in Paragraph 1.
2. The Defendants admit the allegations contained in Paragraph 2.
3. The Defendants admit the allegations contained in Paragraph 3.
4. The Defendants admit the allegations contained in Paragraph 4.
5. The Defendants admit the allegations contained in Paragraph 5.

6. The Defendants admit the allegations contained in Paragraph 6.

**FACTS**

7. The Defendants admit the allegations contained in Paragraph 7.
8. The Defendants admit that Nearis and Rouette represented to MECI that they were also associated with Quality Machine Solutions, Inc. The Defendants deny the remaining allegations contained in Paragraph 8.
9. The Defendants deny the allegations contained in Paragraph 9.
10. The Defendants deny the allegations contained in Paragraph 10.
11. The Defendants deny the allegations contained in Paragraph 11.
12. The Defendants deny the allegations contained in Paragraph 12.
13. The Defendants deny the allegations contained in Paragraph 13.
14. The Defendants deny the allegations contained in Paragraph 14.
15. The Defendants deny the allegations contained in Paragraph 15.
16. The Defendants deny the allegations contained in Paragraph 16.
17. The Defendants deny the allegations contained in Paragraph 17.
18. The Defendants deny the allegations contained in Paragraph 18.
19. The Defendants admit that MECI terminated Nearis and Rouette's employment on March 15, 2004. The Defendants deny the remaining allegations contained in Paragraph 19.
20. The Defendants admit the allegations contained in Paragraph 20.
21. The Defendants deny the allegations contained in Paragraph 21.
22. The Defendants deny the allegations contained in Paragraph 22.
23. The Defendants deny the allegations contained in Paragraph 23.

**COUNT I**  
**(BREACH OF FIDUCIARY DUTY – NEARIS & ROUETTE)**

24. The Defendants restate and reallege their answers to paragraphs 1 through 23 of the Counterclaim and Third-Party Complaint and incorporate them herein by reference.
25. The Defendants admit the allegations contained in Paragraph 25.
26. The Defendants deny the allegations contained in Paragraph 26.
27. The Defendants deny the allegations contained in Paragraph 27.

WHEREFORE, Nelson Rouette, Jay Nearis and Quality Machine Solutions, Inc., pray that this Court:

- a. Enter judgment for the Defendants on this Count;
- b. Award the Defendants its costs to bring this action, including attorneys fees; and
- c. Grant any further relief as this Court may find just and proper.

**COUNT II**  
**(TORTIOUS INTERFERENCE WITH AGREEMENTS AND ADVANTAGEOUS RELATIONSHIPS – QMS, NEARIS, ROUETTE)**

28. The Defendants restate and reallege their answers to paragraphs 1 through 27 of the Counterclaim and Third-Party Complaint and incorporate them herein by reference.
29. The Defendants deny the allegations contained in Paragraph 29.
30. The Defendants deny the allegations contained in Paragraph 30.
31. The Defendants deny the allegations contained in Paragraph 31.
32. The Defendants deny the allegations contained in Paragraph 32.
33. The Defendants deny the allegations contained in Paragraph 33.

34. The Defendants deny the allegations contained in Paragraph 34.

35. The Defendants deny the allegations contained in Paragraph 35.

WHEREFORE, Nelson Rouette, Jay Nearis and Quality Machine Solutions, Inc.,  
pray that this Court:

- a. Enter judgment for the Defendants on this Count;
- b. Award the Defendants its costs to bring this action, including attorneys fees; and
- c. Grant any furthe relief as this Court may find just and proper.

**COUNT III**  
**(CONVERSION – QMS, NEARIS, ROUETTE)**

36. The Defendants restate and reallege their answers to paragraphs 1 through 35 of the Counterclaim and Third-Party Complaint and incorporate them herein by reference.

37. The Defendants deny the allegations contained in Paragraph 37.

38. The Defendants deny the allegations contained in Paragraph 38.

39. The Defendants deny the allegations contained in Paragraph 39.

40. The Defendants deny the allegations contained in Paragraph 40.

41. The Defendants deny the allegations contained in Paragraph 41.

WHEREFORE, Nelson Rouette, Jay Nearis and Quality Machine Solutions, Inc.,  
pray that this Court:

- a. Enter judgment for the Defendants on this Count;
- b. Award the Defendants its costs to bring this action, including attorneys fees; and
- c. Grant any furthe relief as this Court may find just and proper.

**COUNT IV**  
**(M.G.L. Ch. 93A, §11 – QMS, NEARIS AND ROUETTE)**

42. The Defendants restate and reallege their answers to paragraphs 1 through 41 of the Counterclaim and Third-Party Complaint and incorporate them herein by reference.
43. The Defendants deny the allegations contained in Paragraph 43.
44. The Defendants deny the allegations contained in Paragraph 44.
45. The Defendants deny the allegations contained in Paragraph 45.
46. The Defendants deny the allegations contained in Paragraph 46.
47. The Defendants deny the allegations contained in Paragraph 47.
48. The Defendants deny the allegations contained in Paragraph 48.

WHEREFORE, Nelson Rouette, Jay Nearis and Quality Machine Solutions, Inc., pray that this Court:

- a. Enter judgment for the Defendants on this Count;
- b. Award the Defendants its costs to bring this action, including attorneys fees; and
- c. Grant any further relief as this Court may find just and proper.

**COUNT V**  
**(FRAUDULENT MISREPRESENTATIONS – QMS, NEARIS AND ROUETTE)**

49. The Defendants restate and reallege their answers to paragraphs 1 through 48 of the Counterclaim and Third-Party Complaint and incorporate them herein by reference.
50. The Defendants deny the allegations contained in Paragraph 50.
51. The Defendants deny the allegations contained in Paragraph 51.

WHEREFORE, Nelson Rouette, Jay Nearis and Quality Machine Solutions, Inc., pray that this Court:

- a. Enter judgment for the Defendants on this Count;
- b. Award the Defendants its costs to bring this action, including attorneys fees; and
- c. Grant any furthe relief as this Court may find just and proper.

**COUNT VI**  
**(BREACH OF CONTRACT – NEARIS AND ROUETTE)**

- 52. The Defendants restate and reallege their answers to paragraphs 1 through 51 of the Counterclaim and Third-Party Complaint and incorporate them herein by reference.
- 53. The Defendants admit the allegations contained in Paragraph 53.
- 54. The Defendants deny the allegations contained in Paragraph 54.
- 55. The Defendants deny the allegations contained in Paragraph 55.
- 56. The Defendants deny the allegations contained in Paragraph 56.
- 57. The Defendants deny the allegations contained in Paragraph 57.
- 58. The Defendants deny the allegations contained in Paragraph 58.
- 59. The Defendants deny the allegations contained in Paragraph 59.

WHEREFORE, Nelson Rouette, Jay Nearis and Quality Machine Solutions, Inc., pray that this Court:

- a. Enter judgment for the Defendants on this Count;
- b. Award the Defendants its costs to bring this action, including attorneys fees; and
- c. Grant any furthe relief as this Court may find just and proper.

**COUNT VII**  
**(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING –**  
**NEARIS AND ROUETTE)**

60. The Defendants restate and reallege their answers to paragraphs 1 through 59 of the Counterclaim and Third-Party Complaint and incorporate them herein by reference.
61. The Defendants admit the allegations contained in Paragraph 61.
62. The Defendants deny the allegations contained in Paragraph 62.
63. The Defendants deny the allegations contained in Paragraph 63.
64. The Defendants deny the allegations contained in Paragraph 64.

WHEREFORE, Nelson Rouette, Jay Nearis and Quality Machine Solutions, Inc., pray that this Court:

- a. Enter judgment for the Defendants on this Count;
- b. Award the Defendants its costs to bring this action, including attorneys fees; and
- c. Grant any further relief as this Court may find just and proper.

**Nelson Rouette, Jay Nearis and Quality Machine Solutions, Inc. demand a jury trial on all issues so triable.**

**AFFIRMATIVE DEFENSE**

**FIRST AFFIRMATIVE DEFENSE**

The Counterclaim and Third-Party Complaint fail to state a claim for which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

MECI's claims are barred by the applicable statute of limitations.

**THIRD AFFIRMATIVE DEFENSE**

The Defendants have acted at all times in good faith, reasonably and justifiably.

**FOURTH AFFIRMATIVE DEFENSE**

The Defendants state that MECI stop from asserting a breach of contract claim.

**FIFTH AFFIRMATIVE DEFENSE**

The Defendants state that MECI's action is brought in violation of the applicable statute of frauds.

**SIXTH AFFIRMATIVE DEFENSE**

The Defendants state that any amounts due to MECI are subject to offset.

**SEVENTH AFFIRMATIVE DEFENSE**

The Defendants state that MECI failed to perform its obligation and therefore the Defendants performance is excused.

**EIGHTH AFFIRMATIVE DEFENSE**

The Defendants state that MECI has waived any and all claims which are asserted in its Counterclaim and Third-Party Complaint and there is a stop to assert and recover upon such claims.

**NINTH AFFIRMATIVE DEFENSE**

The Defendants state that the acts of MECI, its servants or agents were the cause of the damages alleged in MECI's Counterclaim and Third-Party Complaint and therefore MECI is not entitled to recover against the Defendants.



**TENTH AFFIRMATIVE DEFENSE**

The Defendants state that MECI's claims are barred by the Doctrine of Unclean Hands.

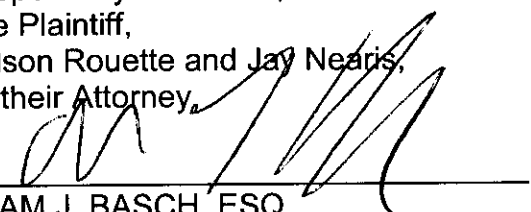
**ELEVENTH AFFIRMATIVE DEFENSE**

The Defendants state that MECI's claims must fail due to MECI's failure to mitigate its damages.

**TWELTH AFFIRMATIVE DEFENSE**

The Defendants reserve their right to add such other affirmative defenses that may become apparent as a result of further proceedings in this matter.

Respectfully submitted,  
The Plaintiff,  
Nelson Rouette and Jay Nearis,  
By their Attorney,



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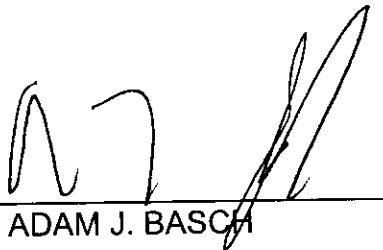
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July 22, 2004

**CERTIFICATE OF SERVICE**

I, ADAM J. BASCH, hereby certify that on the 27 day of July, 2004, I caused a copy of the foregoing to be served upon all interested parties by mailing a copy thereof, postage prepaid, first class mail to:

Jeffrey D. Clements  
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ADAM J. BASCH

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